



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

an

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/736,660 | 12/16/2003 | Michael H. MacKin | OM141 | 6304 |
| 26009 | 7590 | 07/02/2004 | EXAMINER | |
| ROGER M. RATHBUN 13 MARGARITA COURT HILTON HEAD ISLAND, SC 29926 | | | | LACYK, JOHN P |
| | | ART UNIT | | PAPER NUMBER |
| | | 3736 | | |

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|------------------------------|-----------------|--------------------|
| | 10/736,660 | MACKIN, MICHAEL H. |
| Examiner | Art Unit | |
| John P Lacyk | 3736 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-5 and 7-20 is/are rejected.

7) Claim(s) 6 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/10/2004.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dukhan et al.

Dukhan et al discloses an incubator that has a base that has ends and a platform that is adapted to position an infant and a heater (18) located above the platform. Dukhan et al shows a canopy that is pivotally affixed "with respect to the platform" that when in a closed position overlies the infant to create a compartment enclosing the infant and has a means to create an open space that is aligned with the heater having first and second sections ((26 and 27) that pivot with respect to the platform. The first and second sections are pivotally fixed with respect to the platform and each other.

3. Claims 1-5, 7-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg et al.

Goldberg et al discloses a device having a base with an infant platform and an obstruction located above the platform. Goldberg et al has a canopy having first and second sections (42) that are affixed such that they pivot with respect to the platform to open and close an open space that is aligned with the obstruction. The first and second sections are also pivotally fixed with respect to each other. Since the claimed apparatus includes a vertical member (see claim 13) at one end, the first and second sections of

Goldberg et al are considered to be attached to one end of the apparatus and are therefore pivotally affixed to the apparatus.

4. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P Lacyk whose telephone number is 703-308-2995.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John P Lacyk
Primary Examiner
Art Unit 3736

J.P. Lacyk